

Oregon Uniform Trade Secrets Act

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Oregon Revised Statutes §§ 646.461 through 646.475

646.461 Definitions for ORS 646.461 to 646.475.

As used in ORS 646.461 to 646.475, unless the context otherwise requires:

- (1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means. Reverse engineering and independent development alone shall not be considered improper means.
- (2) "Misappropriation" means:
 - (a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means;
 - (b) Disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret;
 - (c) Disclosure or use of a trade secret of another without express or implied consent by a person who, before a material change of position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake; or
 - (d) Disclosure or use of a trade secret of another without express or implied consent by a person, who at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was:
 - (A) Derived from or through a person who had utilized improper means to acquire it;
 - (B) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (C) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.
- (3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity.
- (4) "Trade secret" means information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:
 - (a) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
 - (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

646.463 Enjoining misappropriation; payment of royalties; affirmative acts.

- (1) Actual or threatened misappropriation may be temporarily, preliminarily or permanently enjoined. Upon application to the court, an injunction shall be vacated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.
- (2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of the misappropriation that renders a prohibitive injunction inequitable.
- (3) In appropriate circumstances, the court may order affirmative acts to protect a trade secret.

646.465 Damages for misappropriation.

- (1) A complainant is entitled to recover damages adequate to compensate for misappropriation, unless a material and prejudicial change of position by a defendant prior to acquiring knowledge or reason to know of the misappropriation renders a monetary recovery inequitable.
- (2) Damages may include both the actual loss caused by misappropriation, and the unjust enrichment caused by misappropriation that is

not taken into account in computing actual loss, but shall not be less than a reasonable royalty for the unauthorized disclosure or use of a trade secret.

(3) Upon a finding of willful or malicious misappropriation, punitive damages may be awarded in an amount not exceeding twice any award made under subsections (1) and (2) of this section.

646.467 Attorney fees.

The court may award reasonable attorney fees to the prevailing party if:

- (1) A claim of misappropriation is made in bad faith;
- (2) A motion to terminate an injunction is made or resisted in bad faith; or
- (3) Willful or malicious misappropriation is found by the court or jury.

646.469 Preservation of trade secret by court; methods.

In any action brought under ORS 646.461 to 646.475, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action or ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

646.471 Limitation on commencement of action.

An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

646.473 Conflicting tort, restitution or other law providing civil remedies; exclusions for certain other remedies; limited immunity for public bodies and officers, employees and agents.

- (1) Except as provided in subsection (2) of this section, ORS 646.461 to 646.475 supersede conflicting tort, restitution or other law of Oregon providing civil remedies for misappropriation of a trade secret.
- (2) ORS 646.461 to 646.475 shall not affect:
 - (a) Contractual remedies, whether or not based upon misappropriation of a trade secret;
 - (b) Other civil remedies that are not based upon misappropriation of a trade secret;
 - (c) Criminal remedies, whether or not based upon misappropriation of a trade secret; or
 - (d) Any defense, immunity or limitation of liability afforded public bodies, their officers, employees or agents under ORS 30.260 to 30.300.
- (3) Notwithstanding any other provision in ORS 646.461 to 646.475, public bodies and their officers, employees and agents are immune from any claim or action for misappropriation of a trade secret that is based on the disclosure or release of information in obedience to or in good faith reliance on any order of disclosure issued pursuant to ORS 192.410 to 192.490 or on the advice of an attorney authorized to advise the public body, its officers, employees or agents.

646.475 Application and construction of ORS 646.461 to 646.475; short title; effect of invalidity.

- (1) ORS 646.461 to 646.475 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ORS 646.461 to 646.475 among states enacting them.
- (2) ORS 646.461 to 646.475 may be cited as the Uniform Trade Secrets Act.
- (3) If any provision of ORS 646.461 to 646.475 or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of ORS 646.461 to 646.475 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 646.461 to 646.475 are severable.